Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Joint Petition for Expedited Rulemaking	)	CI Docket No. 02-22
Establishing Minimum Notice Requirements	)	
for Detariffed Services	)	

AT&T Comments

Pursuant to the Commission's Public Notice (DA 02-271, released February 6, 2002), AT&T Corp. ("AT&T") submits the following comments in response to Petitioners'[1] request that the Commission initiate a notice of proposed rulemaking to adopt a federal minimum notice requirement for interexchange carriers ("IXCs") seeking to make material changes to the rates, terms or conditions of detariffed domestic toll services provided to their presubscribed customers.

AT&T supports the initiation of a proceeding pursuant to which the Commission would adopt a uniform national rule that establishes specific advance notice requirements regarding material changes in the rates, terms and conditions of nondominant carriers' presubscribed domestic interstate toll services that are subject to detariffing. Such a requirement is clearly within the Commission's sole jurisdiction and, if reasonably

[1] Petitioners include AARP, Consumer Action, Consumer Federation of America, Consumers Union. the Massachusetts Union on public Housing Tenants, the National Association of Regulatory Commissioners, the National Association of Consumer Agency Administrators, the National Association of State Utility Consumer Advocates, and the National Consumers League.

crafted and limited, could serve the public interest without creating excessive regulatory burdens on carriers.[2]

As a threshold matter, section 201(b) of the Communications Act, 47 U.S.C. § 201(b), requires that "[a]ll charges, practices . . . and regulations for and in connection with" interstate services be just and reasonable. Under this statutory provision, the Commission has the exclusive authority to adopt a reasonable advance notice requirement regarding material changes in the rates, terms and conditions of interstate services. Indeed, decades of judicial decisions, including controlling Supreme Court precedent, hold that the federal regulatory statutes establish uniform rules that leave no room for state law regarding the rates, terms and conditions for interstate services.[3]

Moreover, as a policy matter, it is important to have a single national rule on this subject to prevent the possibility that states might otherwise seek to impose, albeit without authority, multiple, inconsistent rules. Interstate toll services, by their nature, are national in scope, and virtually all IXCs operate on at least a regional, if not a national, basis. IXCs and their customers should not be subject to potentially different rules in different states regarding basic terms and conditions for the provision of interstate service. Thus, any federal rule adopted here would set the single national standard, and

[2] Although the hotly contested nature of the long distance market makes the need for any written notice rules in this area somewhat questionable in light of their costs, a single national rule is certainly better than the uncertainty and confusion that could result from a patchwork of inconsistent rules in jurisdictions around the country.

[3] *Chicago & Northwestern Transportation Co. v. Kalo Brick & Tile Co*., 450 U.S. 311 (1981); *Nordlicht v., New York Tel. Co*., 799 F. 2d 859 (2d Cir. 1986); *Ivy Broadcasting v. AT&T*, 391 F.2d 486, 490-91.

underscore the preemption of contrary state regulations, as specifically contemplated by the Communications Act.[4]

With respect to the services that should be covered, AT&T agrees with Petitioners (Petition at 1, 7) that any Commission advance notice rule should be limited to nondominant carriers' (i) detariffed, (ii) presubscribed and (iii) domestic interstate services. AT&T also believes that it would be appropriate to limit any such rule to direct-dialed (1+) calls.

Because the genesis of Petitioners' concerns is the Commission's *Detariffing Order*[5] (Petition at 3), it is appropriate to limit any advance notice requirements to *detariffed* services. Not only will the traditional protections of tariffing still apply to the few services that still remain subject to permissive tariffing, but those are the services for which it is difficult (if not impossible) for a carrier to identify (much less communicate with) its customers.[6]

Second, it is appropriate to limit any notice rule to *presubscribed* customers, as Petitioners (at 7) suggest. These are the customers with whom carriers have established ongoing relationships and that they can reasonably identify. Thus, "casual" callers (those who use access codes to place calls) of all types should be excluded from advance notice

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[4] Notably, such a unitary national rule would not affect questions relating to the formation or interpretation of contracts for interstate toll service, which the Commission has found to be outside the scope of exclusive federal jurisdiction. Rather, it would be a substantive rule regarding the rates, terms and conditions of interstate services.

[5] *Policy and Rules Concerning the Interstate, Interexchange Market*, CC Docket No. 96-61, Second Report and Order, released October 31, 1996 ("Detariffing Order").

[6] Rule 61.19 (b)&(c), 47 C.F.R. 61.19(b)&(c) (covering dial-around 1+ calls and services (for a limited period of time) for customers who presubscribe to an IXC through their local exchange carrier).

requirements, because carriers cannot identify them sufficiently in advance to permit communication of material changes in rates, terms or conditions.[7]

AT&T also agrees with Petitioners (at 1) that advance notice requirements should apply only to *domestic* services. International rate tables are complex and voluminous because they are often location-specific for the more than 200 foreign jurisdictions around the world. Moreover, most customers make few (if any) calls to any international destinations, and rate changes for calls to individual foreign destinations often are the result of unique arrangements between domestic and foreign carriers. Given the number of jurisdictions involved, international rates change more frequently than interstate domestic rates, but the amount of calling to any foreign destination is minimal compared to the amount of domestic calling. Thus, requiring advance written notice of changes to international rates that affect calling to a particular location that most customers seldom, if ever, call would potentially benefit only a tiny fraction of callers, and the substantial costs of providing a general notice to all customers regarding such rate changes would more than offset the limited benefit.

AT&T further believes that any advance notice requirements should apply only to *direct-dialed*, *i.e.*, 1+, rather than 0+ dialed calls. Direct-dialed calls represent the vast bulk of the charges on IXC customers' monthly bills. Moreover, the Commission already has rules in place requiring operator services providers to make rate information available at the time 0+ calls are placed from aggregator and inmate phones.[8] Thus, those 0+ users

[7] In all events, the rates terms and conditions for customers that place dial-around 1+ calls are covered by permissive tariffs filed pursuant to Rule 61.19(b).

[8] Rules 64.707 and 64.710, 47 C.F.R. §§ 64.707, 64.710. *See also In the Matter of Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, Second Order on Reconsideration, released December 12, 2001.

already have access to rate information before they place each call, and no further notice requirements are necessary. If carriers made the same rate information available on all 0+ calls, there is clearly no reason to require further notice of future rate changes.

AT&T recommends that the Commission adopt a 15-day advance notice period for communicating rate changes covered by any new rule. As Petitioners correctly note (at 5), under the prior tariffing regime, changes in the rates terms and conditions for nondominant carriers' interexchange services became effective on one day's notice.[9] Thus, a 15-day period is in fact a significant "improvement for customers over the old tariff system" (Petition at 5). Because customers today have the ability to change IXCs almost instantaneously, a 15-day rule will readily allow customers who want to change carriers as the result of a material rate change to do so, well before they would incur the new rates.[10]

The particular type of notice required by any new rule is likely to generate the greatest regulatory costs for all parties involved, and thus requires an appropriate balancing between the costs and benefits arising from advance notice requirements. Advance written notice is by far the most expensive form of notice and should be limited to cases where it is demonstrably required, as the costs of such notice must ultimately be borne by customers themselves. Given those considerations, AT&T suggests that an advance written notice requirement be imposed, if at all, in only two situations: (i) for

[9] *See* Rule 61.23(c), 61 C.F.R. § 61.23(c).

[10] One of the reasons the Commission cited in support of detariffing was carriers' reduced ability to engage in "price coordination" or "price signaling." *Detariffing Order* ¶¶ 37, 41, 61. Ironically, the longer the advance notice period that would be required by the requested rule, the more opportunities the Commission would create for such activities.

residential customers with whom the carrier does not have an electronic billing arrangement; and (ii) for business customers if the carrier does not make notice of rate changes for applicable services available on its website. However, if a residential customer has already established an electronic billing arrangement with an IXC or business customers can get access to information regarding changes from a carrier's website or by e-mail, there is no reason to require carriers to incur the significant costs of written notice. Likewise, if a carrier and a business customer individually negotiate a service contract that itself provides for the manner in which rate changes can be made, these mutually-agreeable provisions should supersede any generic notice requirement. Thus, any rule the Commission adopts should expressly exempt such agreements with business customers.

Limiting written notice requirements to these customers is appropriate for several reasons. In particular, residential customers who voluntarily establish electronic billing arrangements with their carriers have demonstrated that electronic access meets their needs. There is no reason to superimpose a separate written (*i.e.*, paper) notice requirement for such customers. Indeed, these customers likely expect that pertinent information regarding their service will come electronically, rather than through "snail mail." Thus, timely (*i.e.*, 15-day) electronic notice posted on the carrier's website should be sufficient for such customers, especially if they are provided with a separate electronic notice of prospective changes in their rates, terms or conditions that they may wish to review. With respect to residential customers who do not have electronic billing arrangements with an IXC, any Commission notice rule should make clear that the carrier may use any form of written notice, including either bill inserts or messages printed

directly on bills,[11] which are often the most convenient and cost-efficient means of informing customers of service changes. The Commission should also clarify that the carrier alone is entitled to decide which notification medium is appropriate in any specific situation.

Although Petitioners seek an advance notice requirement that applies only to "material" changes, they offer no guidance as to the meaning of that essential term. AT&T believes that it is important for the Commission to provide specific guidance on this issue. Otherwise, any new rules will likely engender significant disputes, and impose unnecessary costs that swallow up the intended benefits. AT&T proposes that the threshold for written advance notice should be rate changes that result in an increase[12] of at least 5% for the average affected customer's bill over a 12-month period, or changes in the terms and conditions for the service that have an equivalent economic impact. This represents a reasonable balance between the value of the notice and the costs of making written notice available to customers nationwide.

Conclusion

For the reasons set forth above, AT&T supports the initiation of a rulemaking in which the Commission could establish uniform national notice requirements regarding material changes in detariffed, presubscribed domestic interexchange services that are

[11] The Petition (at 7) references "bill inserts" but not messages printed directly on customers' bills. Both forms of notice should be permitted.

[12] No advance notice of rate decreases should be required, although carriers may well wish to provide such information to customers voluntarily.

carefully crafted to meet consumer needs but do not impose excessive costs on carriers and their customers.

Respectfully submitted,

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